

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MONEIL MAHENDRA PATEL, M.D.

Physician's & Surgeon's
Certificate No. A107791

Respondent.

Case No. 800-2016-027195

OAH No. 2017020335

DECISION AFTER REMAND FROM SUPERIOR COURT

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on June 1, 2017, in Oakland, California.

Joshua M. Templet, Deputy Attorney General, Office of the Attorney General (OAG) represented Kimberly Kirchmeyer, Executive Director, Medical Board of California (Board).

Albert J. Garcia, Attorney at Law, represented Respondent Moneil Mahendra Patel, M.D., who was present.

The record closed on June 1, 2017. Panel B of the Board (Panel) declined to adopt the Proposed Decision (Decision) and issued an Order of Non-Adoption (Order) on August 10, 2017, and the Order sought written argument on whether the proposed penalty should be modified. Oral argument was scheduled for October 25, 2017, and oral argument was heard by the Panel on that date. Respondent was present, as was the OAG. Respondent's counsel appeared by telephone. The Panel issued its Decision After Non-Adoption on December 7, 2017, to become effective on January 5, 2018.

Thereafter, respondent filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 34-2018-80002772. On January 8, 2019, the court issued its judgment in the matter, ordering the peremptory writ of administrative mandamus to issue and the writ issued on that date. The Superior Court commanded the Board to remove the requirement that respondent undergo a "comprehensive physical and mental examination" as it relates to the term and condition of probation requiring respondent to enroll and complete a Clinical Competence Assessment Program.

Having taken written argument and having heard oral argument in this matter on August 8, 2019, the Board has reconsidered the penalty in this matter in accordance with the court's instructions. The Board hereby modifies its Decision After Non-Adoption dated December 7, 2017, by making the following Decision After Remand from Superior Court, in compliance with the Writ of Mandate. A copy of the Order After Hearing on Petition for Writ of Mandate and Judgment are attached as Exhibit A.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer filed the Accusation in her official capacity as Executive Director of the Medical Board of California (Board).

2. On May 15, 2009, the Board issued Physician's and Surgeon's Certificate No. A107791 to Moneil Mahendra Patel, M.D. (Respondent). Respondent's certificate will expire on August 31, 2018, unless renewed.

3. On October 5, 2016, the Arizona Medical Board issued a "Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation" (Arizona Order) regarding Respondent's medical license in that state. The Arizona Board found that between 2012 and 2014, Respondent engaged in unprofessional conduct by inappropriately prescribing medication for weight loss for two patients. It found that Respondent prescribed "a variety of controlled substances to Patients SN and MA that were not indicated and [were] issued prior to any patient examination," and that SN and MA suffered actual harm because they "were subjected to unnecessary therapy." In addition to the letter of reprimand, Respondent was placed on probation for six months, pursuant to conditions that he complete in-person and intensive continuing medical education (CME) classes including no less than five hours in ethics and a minimum of 15 hours in medical recordkeeping.

4. Respondent's conduct and the action that the Arizona Board took against Respondent constitute unprofessional conduct within the meaning of California law.

5. On February 25, 2017, Respondent completed a 13-hour course titled "Burnout: Recognition and Prevention" presented by the Texas Medical Association in Fort Worth. He earned six hours of CME credit in ethics. On March 18, 2017, Respondent completed a course titled "Medical Record Keeping" in San Mateo presented by the Western Institute of Legal Medicine, and earned 17 hours of CME credit.

6. By letter dated April 14, 2017, the Arizona Board informed Respondent that he had satisfied the terms and conditions of the Board's Order and that probation was terminated.

Respondent's evidence

7. Respondent was raised in Southern California and graduated from the University of California, Irvine. He earned his medical degree at Ross University School of Medicine, Commonwealth of Dominica, West Indies, and completed an internship and a residency (anatomic pathology/clinical pathology) at New York Medical College, St. Vincent's Catholic Medical Center. Respondent completed a fellowship in pediatric pathology at the University of Southern California Keck School of Medicine, Children's Hospital, Los Angeles, in 2010.

8. Respondent and his wife moved to Arizona in 2011. Respondent took a position with Life XMD in Scottsdale, a clinic that specializes in bio-identical hormone replacement therapy (HRT). Respondent saw patients in the facility. He describes the practice as "more cosmetic or elective," and explained that the focus of treatment was on improving strength or stamina, primarily for men.

At the time he practiced at Life XMD, between 2012 and 2014, Respondent believed that his expertise in laboratory medicine, along with the specific courses and training he completed, would serve him well in an emerging field of medicine. He now believes that more needs to be known about possible long-term side effects of HRT, and chose to leave the practice in 2014.

Since leaving Life XMD, Respondent has been in general practice focusing on pain management and addiction medicine. On Fridays, he works at Corebella Health and Wellness, a private clinic assisting addicts who are struggling to recover from heroin or prescribed narcotics. In this role, Respondent prescribes medications such as Suboxone and medical marijuana, which is permitted in Arizona pursuant to strict guidelines.

9. Respondent describes a lack of documentation as the most egregious error he made. This is because improper documentation can lead to confusion for the next physician who treats the patient. Respondent asserts that he did conduct proper physical examinations, but he failed to document them thoroughly. He acknowledged that this failure could lead to patient harm. In 2013, he began to use electronic medical records (EMR), and is very pleased with the results.

Respondent described the recordkeeping course he took in San Mateo as "tremendous." He has since further improved his practice in documentation and informed all of his colleagues about the important things he learned. Respondent is particularly enthusiastic about how the use of EMR's allows him to thoroughly document continuity of care in the patient's medical record.

10. Sandeep Lal, M.D., is a hospitalist with Kaiser Permanente in San Leandro. He met Respondent when they were in medical school and they are very good friends. Dr. Lal testified at hearing on Respondent's behalf after working a 12-hour overnight shift. He described his relationship with Respondent as like a brother, and they talk on the phone regularly and take trips together. Dr. Lal opined that Respondent has good values, morals, and integrity,

and is always honest and truthful. Dr. Lal has read the pertinent legal documents, but they do not change his mind about Respondent. He noted that Respondent told him about the Arizona action and that Respondent has accepted responsibility for his actions.

11. Matthew Dorchester, D.C., operates a “General Medical and Physical Medicine Therapy Practice” in Arizona. In a letter dated May 13, 2017, he wrote that he is aware of the Arizona Board’s action, and strongly disagrees with the outcome, but notes that Respondent has accepted responsibility for the underlying conduct. Dr. Dorchester has worked with Respondent since October 2014, and describes him as a warm and kind friend, who has “lifted himself up out of the emotional turmoil to find a higher ground with an enlightened sense of purpose.” He continues to support Respondent, and will continue to employ him in his practice.

12. Mona Amin, D.O., is Respondent’s wife. In a letter dated May 18, 2017, she wrote that she has known him since 2007 and that “he is an outstanding physician.” He handled the stress of the Arizona Board action “with dignity and compliance.” Dr. Amin opined that Respondent is not only knowledgeable, but that “he strives to provide excellent care to his patients and takes the time to assess their problems.”

LEGAL CONCLUSIONS

1. Business and Professions Code section 141, subdivision (a), provides:

For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

Business and Professions Code section 2305 provides:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

2. Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code sections 141 and 2305 by reason of the matters set forth in Findings 3 and 4.

3. In his written argument, Respondent urges the Panel to adopt the Decision, which specified that the level of discipline to be imposed was a public reprimand and prescribing practices course. In his argument, Respondent suggests that he has gained insight from the disciplinary endeavor undertaken by the Arizona Medical Board, is not engaged in bio-identical hormone replacement therapy, has complied with the foreign board's decision and has accepted responsibility for his actions, and the proposed level of discipline was adequate. Respondent's counsel explained that Board's disciplinary guidelines were, in fact, *guidelines* from which the Panel could deviate. Counsel for Respondent was emphatic that the Panel was not bound by the level of discipline originally proposed.

4. Complainant's counsel, in her written argument, saw the matter through a different lens. In this matter, her argument stated, a deviation from the Board's established guidelines was not prudent public policy and that the Arizona Medical Board's guidelines do not control here. At oral argument, Complainant's counsel was resolute that the original Decision's discipline was inadequate.

5. The Panel believes a more comprehensive level of discipline is necessary to protect the public and aid in the rehabilitation of the licensee. (See Bus. & Prof. Code, §§ 2001.1, 2229.) The Board's guidelines, incorporated by reference in regulation, with respect to discipline taken against a Board licensee by another licensing jurisdiction, set forth the concept that the Board should impose that level of discipline for a similar offense if conducted in California. (See Cal. Code Regs., tit. 16, § 1361, See also *Manual of Model Disciplinary Orders and Disciplinary Guidelines* (2016), p. 22.) In California, the prescribing of a dangerous drug to a patient without an appropriate prior examination and a medical indication constitutes unprofessional conduct. (Bus. & Prof. Code, § 2242.) Likewise, failing to maintain adequate and accurate medical records constitutes unprofessional conduct. (Bus. & Prof. Code, § 2266.)

6. This is not a one patient case, and it is not a case where a public reprimand – even with additional education -- will advance public protection and aid in the rehabilitation of the licensee. Respondent prescribed controlled substances to two patients without medical indication and prior to a medical examination, which subjected them to unnecessary therapy and actual harm. (See Factual Findings, Para. 4.) Rather, a term of probation with attendant terms and conditions is necessary in this case.

7. At hearing, Respondent testified that the biggest error he made was in regard to documentation. (See Factual Findings, Para. 9, See also Reporter's Transcript, p. 16, lines 24-25, p. 18, lines 2-7.) The Panel believes that Respondent's conduct cannot be minimized in that way, however, and that Respondent committed unprofessional conduct beyond inadequate medical recordkeeping. As one of the purposes of administrative discipline is to prevent patient harm, the Panel will order Respondent to successfully complete additional medical education

and a clinical competency assessment program. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.)

ORDER

Physician's and Surgeon's Certificate No. A107791, issued to Moneil Mahendra Patel, M.D., is hereby revoked. However, the revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions.

1. Clinical Competence Assessment Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require respondent's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the respondent did not successfully complete the

clinical competence assessment program, the respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

2. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at pain management and addiction medicine and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. Monitoring - Practice/Billing

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its

designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

4. Medical Record Keeping Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

5. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. Controlled Substances- Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

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7. Notification

Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

9. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no

circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

14. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

15. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. License Surrender

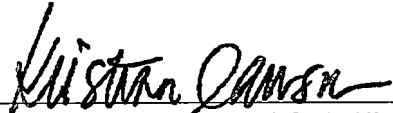
Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

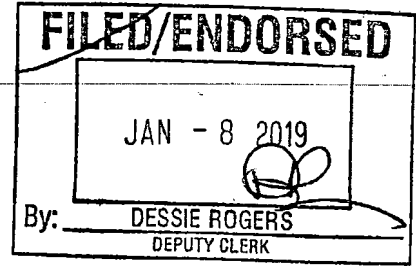
This Decision shall become effective on: October 3, 2019 at 5:00 p.m.

It is so ORDERED: September 3, 2019.



KRISTINA D. LAWSON, J.D.
Chair, Panel B
Medical Board of California

EXHIBIT A



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

MONTEIL PATEL, MD.,

Petitioner,

v.

MEDICAL BOARD OF CALIFORNIA,

Respondent.

Case No.: 34-2018-80002772

ORDER AFTER HEARING ON PETITION
FOR WRIT OF MANDATE

On January 4, 2019, hearing was held on the court's tentative ruling on the petition for writ of mandate. Petitioner was represented by Albert J. Garcia, and Respondent was represented by Supervising Deputy Attorney General Mary Cain-Simon. Having considered the parties' arguments and papers, the court now issues the following final ruling and statement of decision.

INTRODUCTION

Petitioner Monteil Patel, M.D., challenges a decision by Respondent Medical Board of California placing him on probation for three years subject to certain terms and conditions. For the reasons discussed below the court finds (1) the Board's decision is supported by the evidence, (2) three years of probation is not an excessive penalty and (3) with one exception the terms and conditions of probation are reasonable.

BACKGROUND

Patel was licensed by the Board in 2009 and his California license remains current. He moved to Arizona in 2011 and obtained a license from the Arizona Medical Board. He currently lives and practices medicine in Arizona. He does not practice medicine in California and has no plans to do so in the immediate future, although he states he "may" return to California "down the road." (Tr. 19.)

In October 2016 the Arizona Medical Board issued an order reprimanding Patel and placing him on probation for six months for unprofessional conduct. The order arose out of Patel's work at an Arizona clinic called LifeXMD, a private practice offering hormone optimization and testosterone therapy. Patel worked at LifeXMD from 2012 through 2014. The Arizona Medical Board found Patel prescribed medications for two LifeXMD patients (1) prior to examining them, (2) without performing appropriate monitoring and (3) that were not indicated for their conditions. It also found the two patients suffered "actual harm" because they were "subjected to unnecessary therapy." As part of his probation Patel was required to take continuing medical education courses in ethics and recordkeeping. (Ex. 3.)

Patel satisfied all the terms and conditions of his Arizona probation, and his probation was terminated in April 2017. (Ex. D.)

In the meantime, in January 2017, California's Board issued an accusation seeking to discipline Patel based on the Arizona Medical Board's disciplinary action. (Ex. 1.) The accusation was issued pursuant to Business and Professions Code sections 141 and 2305, which provide a physician licensed by California who is disciplined by another state is also subject to discipline by California's Board for unprofessional conduct. (Bus. & Prof. Code §§ 141, 2305.)

Patel contested the accusation, and hearing was held before an Administrative Law Judge ("ALJ"). The hearing was short and focused on the penalty. Patel testified LifeXMD provided "bioidentical hormone replacement," which he described as "a cosmetic or elective treatment" helping with weight loss, lack of energy and low libido. (Tr. 12.) He testified he no longer works for LifeXMD and no longer engages in biomedical hormone replacement. (Tr. 12, 17.) He currently has a private practice focusing on pain management and addiction medicine. (Tr. 11.)

Patel testified the Arizona Medical Board's order was based primarily on documentation errors and "nothing was related to improper physical exam or anything." (Tr. 16, 18.) When

asked about the Arizona Medical Board's finding he caused actual harm to both patients, he responded "the harm is the improper documentation." (Tr. 26.) He explained:

Q: Is it your opinion that the only harm you caused to the patients at issue in the Arizona order was through your documentation?

A: That would be the vast majority of it. Medications also come with underlying risks and so that could have been harm as well or potential harm.

(Tr. 26.) However, Patel did acknowledge the Arizona Medical Board found both patients were harmed because they were subjected to unnecessary therapy. (Tr. 27.)

The ALJ issued a proposed decision finding cause to discipline Patel based on the Arizona Medical Board's disciplinary action. The ALJ ordered Patel be publically reprimanded and required to complete a course in prescribing practices.

The Board declined to adopt the ALJ's proposed decision. It allowed additional argument on whether the proposed penalty should be modified.

In December 2017 the Board issued its own decision. The Board adopted all the ALJ's factual findings but rejected the ALJ's penalty. The Board concluded "a more comprehensive level of discipline is necessary to protect the public and aid in the rehabilitation of the licensee."

The Board explained:

This is not a one patient case, and it is not a case where a public reprimand – even with additional education – will advance public protection and aid in the rehabilitation of the licensee. [Patel] prescribed controlled substances to two patients without medical indication and prior to a medical examination, which subjected them to unnecessary therapy and actual harm.

The Board noted Patel's testimony he was disciplined primary for documentation errors. It found, however, Patel's "conduct cannot be minimized in that way." He "committed unprofessional conduct beyond inadequate recordkeeping." The Board placed Patel on probation for three years, subject to certain terms and conditions.

Patel now challenges that decision by petition for writ of mandate.

STANDARD OF REVIEW

The right to practice one's profession is a fundamental, vested right. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1440.) If a person's license to practice that profession is revoked, the court applies its independent judgment in reviewing the evidence

underlying the decision. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 144; *Petrucci v. Board of Medical Examiners* (1975) 45 Cal.App.3d 83, 86.) The court weighs the evidence, making its own findings and determinations. "In making that determination, the court acts as a trier of fact; it has the power and responsibility to weigh the evidence and make its own determination about the credibility of witnesses." (*Arthur v. Department of Motor Vehicles* (2010) 184 Cal. App. 4th 1199, 1205; see also *Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658.) In exercising its independent judgment, however, the court must afford a "strong presumption of correctness" to the administrative findings. Patel bears the burden of convincing the court the administrative findings are contrary to the weight of the evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817; see also *City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522, 536; *Arthur, supra*, 184 Cal. App. 4th at 1205.)

The court's review of the penalty imposed is more deferential. The Board has broad discretion in determining the appropriate punishment of its licensees. (*Cadilla v. Board of Medical Examiners* (1972) 26 Cal.App.3d 961, 966; *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal. App. 4th 29, 40.) The court will not disturb the Board's penalty decision unless Patel demonstrates a manifest abuse of discretion. (*California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal. App. 4th 1575, 1580; *Cadilla, supra*, 26 Cal.App.3d at 966.)

DISCUSSION

The Business and Professions Code provides:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

(Bus. & Prof. Code § 2305; see also § 141.) The disciplinary action taken by the Arizona Medical Board is thus grounds for discipline by the Board. Patel does not contend otherwise.¹

~~Instead, Patel challenges the penalty imposed—three years of probation subject to~~
specified terms and conditions. He argues the penalty is excessive, constitutes an abuse of discretion, is not supported by the findings and is not reasonably related to the conduct

¹ A certified copy of the Arizona Medical Board's order was admitted into evidence at the hearing and is part of the administrative record.

underlying the Arizona Medical Board's disciplinary action. With one exception, he fails to convince.

1. ALJ's decision

Patel's first argument is based on Business and Professions Code section 2335, which provides the Board "shall give great weight to the findings of fact of the administrative law judge, except to the extent those findings of fact are controverted by new evidence." (§ 2335, subd. (c)(1).) Patel argues the Board failed to proceed in the manner required by law because it did not give great weight to the ALJ's findings of fact, as required by section 2335. Not so.

The Board did more than simply give great weight to the ALJ's findings of fact; the Board adopted those findings verbatim. The Board simply increased the penalty based on those findings. It was permitted to do so. In the words of one court, "there is no authority for the notion that the board is bound by the discipline proposed by the administrative law judge[.]" (*Bryce v. Bd. of Medical Quality Assurance* (1986) 18 Cal.App. 1471, 1475; see also *Kifle-Thompson v. State Bd. Of Chiropractic Examiners* (2012) 208 Cal.App.4th 518, 531 ["Once the Board determined not to adopt the proposed decision, that decision served no identifiable function in the administrative adjudication process or, for that matter, in connection with the judicial review of that process."], internal quotes omitted.)

Patel thus fails to convince the Board violated section 2335 or otherwise failed to proceed in the manner required by law.

2. Three years of probation

Patel's primary argument is the penalty imposed by the Board is excessive and bears no rational relationship to the conduct underlying the Arizona Medical Board's disciplinary action.

The Board has broad discretion in determining the appropriate punishment of its licensees. (*Cadilla v. Board of Medical Examiners* (1972) 26 Cal.App.3d 961, 966.) The court will not disturb the penalty imposed by the Board unless Patel demonstrates it is grossly excessive or a manifest abuse of discretion. (*Id.*; *Borden v. Division of Medical Quality* (1994) 30 Cal.App.4th 874, 884.) As one Court of Appeal has observed, "The Legislature has vested in the Board of Medical Examiners the discretion to determine the suitable penalty to be imposed where cause for discipline is found to exist." (*Id.* at 967.) The court is not free to substitute its

discretion for that of the Board concerning the degree of punishment imposed. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal. App. 3d 293, 304.) Instead, the court must pay “great deference” to the Board’s expertise in determining the proper penalty. (*Id.*)

As another Court observed, “[there] is no other profession in which one passes so completely within the power and control of another as does the medical patient. Consequently, the board is constitutionally permitted to impose discipline where there exists a nexus between the act or omission and the [professional’s] fitness or competence to practice his profession. Once that nexus is established, the Legislature has empowered the board to impose discipline as it [deems] proper; and the propriety of the penalty is for the agency, not the court, to decide.” (*Bryce v. Bd. of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1475-76, internal quotes and cites omitted.)

Given this deferential standard of review, Patel fails to convince the Board abused its discretion by placing him on probation for three years.

Patel contends the public reprimand imposed by the ALJ is appropriate. Perhaps.² But it was rejected by the Board, which is charged with deciding the appropriate penalty. Again, the Board is not bound by the discipline proposed by the ALJ. (*Bryce, supra*, 18 Cal.App.3d at 1475.)

Patel argues the penalty imposed by the Board must be reasonably related to conduct for which he is being disciplined. Patel cites a criminal case holding “[a] probation condition is unreasonable if it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.” (*People v. O’Neil* (2008) 165 Cal.App.4th 1351, 1355.)

The court is not convinced *O’Neil* is applicable to the instant administrative proceeding. At least one court has held “there is no authority for the notion that the . . . penalty must be

² The ALJ’s proposed reprimand departs from disciplinary guidelines promulgated by the Board to promote uniformity, certainty and fairness in imposing discipline. Patel acknowledges these guidelines provide “[a]ny proposed decision . . . that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.”

The guidelines provide the penalty for a physician disciplined by another state should be the same as for a similar offense in California. The guidelines recommend a *minimum* of five years of probation for a physician disciplined for (1) excessive prescribing, (2) prescribing without an appropriate prior examination, or (3) inadequate recordkeeping.

Here, the Arizona Medical Board disciplined Patel for excessive prescribing, prescribing without an examination, and inadequate recordkeeping regarding two patients. In imposing a public reprimand, the ALJ thus departed from the guidelines. Patel cites no authority for the proposition the Board was required to accept that departure.

directed related to the offense.” (*Bruce, supra*, 184 Cal.App.3d at 1475.)

Patel fails to persuade that placing him on probation for three years has no relation to the underlying Arizona offense or otherwise constituted an abuse of discretion. As the Board noted, Patel was not disciplined solely for documentation errors. The Arizona Medical Board found he prescribed medications for two patients without an appropriate physical examination or monitoring, thus subjecting them to unnecessary therapy. The court cannot say three years’ probation is excessive given Patel’s conduct.

Patel also complains the Board ignored his mitigating evidence: He has not worked at LifeXMD since 2014; he no longer practices hormone replacement therapy; he accepted responsibility for his actions and learned from his mistakes; and he successfully completed his Arizona probation. However, the Board did not ignore this evidence. Indeed, it made express findings citing these facts. (See Dec., Facts 6, 8, 9.)

Patel fails to convince any of this evidence undermines the Board’s decision to place him on probation for three years.

3. Terms and conditions of probation

The Board placed Patel on probation subject to numerous terms and conditions. Patel challenges some.

A. Physical and mental health assessment

The Board required Patel to complete a “clinical competence assessment program” that must include “a comprehensive assessment of [his] physical and mental health.”³ (Condition 1, emphasis added.) Patel argues (1) the Arizona Medical Board’s action had nothing to do with his physical or mental health and (2) the record is devoid of any evidence suggesting there is anything wrong with his physical or mental health.⁴ He asserts an assessment of his physical and mental health will intrude upon his privacy. He maintains the Board abused its discretion in ordering an assessment of his physical and mental health, and that order is not supported by the findings. The court agrees.

³ The program must also include an assessment of “the six general domains of clinical competence . . . pertaining to [Patel’s] current or intended area of practice.” Patel does not challenge this portion of the requirement.

⁴ The Board does not dispute this.

Although not directly on point, the Court's discussion of the right to privacy in *Kees v. Medical Board* (1992) 7 Cal.App.4th 1801 is instructive. There the Board revoked a physician's license for failing to undergo a psychiatric examination ordered pursuant to Business and Professions Code section 820, which allows the Board to order an examination if it appears a physician is unable to safely practice medicine "due to mental illness, or physical illness affecting competency." The physician in *Kees* argued the examination violated his right to privacy. The Court agreed.

The Court in *Kees* explained while the right to privacy does not prohibit all invasions of individual privacy, it does require a *compelling interest* to justify such invasions. (*Kees, supra*, 7 Cal.App.4th at 1812.) It also requires a showing the government interest cannot be accomplished by less intrusive means. (*Id.* at 1813.) The Court noted an individual's right to privacy encompasses mental privacy, including thoughts, emotions, expressions and personality. The Court stated "if there is a quintessential zone of human privacy it is the mind." (*Id.* at 1813.)

Although the Court in *Kees* acknowledged the government has a compelling interest in protecting the public from harm by physicians so impaired they cannot safely practice medicine, it found the Board "never made a showing of good cause to justify a second psychiatric examination. In this sense, [the physician's] privacy rights were violated." (*Id.* at 1815.)

Here too the Board failed to explain why it needs to assess Patel's physical and mental health. Indeed, its decision contains no explanation of this condition. Nor did the Board mention this requirement in its briefing other than to state "[t]he physical and mental examination are but one component of a full [clinical competency] assessment." (Opp. at 8.) This may be true. But that fact does not lessen its intrusive nature.⁵ Patel argues there is no suggestion in the Arizona Medical Board's order that there is anything wrong with his physical or mental health. The Board does not dispute this.

Given the Board's failure to explain, much less justify, why it needs to perform a comprehensive assessment of Patel's physical and mental health, the court's tentative ruling

⁵ At the hearing, the Board argued there was no evidence in the record the assessment would be unduly intrusive or invasive of Patel's privacy. The court disagrees. The only evidence on the scope of the assessment comes from the Board's own decision, which ordered Patel to undergo "a *comprehensive assessment of [his] physical and mental health[.]*" (Condition 1, emphasis added.) Absent any evidence to the contrary, the court assumes the ordered assessment of Patel's physical and mental health will be just that – *comprehensive*.

found the Board had not established *any* cause, much less good cause, for requiring Patel to undergo a physical and mental examination.

At the hearing, the Board sought to provide the explanation missing from its decision and briefing. The Board also proffered a document from a clinical assessment program administered by the University of California, San Diego. The court did not consider either this document or the Board's new arguments raised for the first time at the hearing. As the Third District Court of Appeal has explained in the appellate context:

Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.

(*Neighbors v. Buzz Oates Enterprises* (1990) 217 Cal. App. 3d 325, 335, fn. 8.)

The same considerations of fairness apply here. Also, if the Board wanted the court to consider documents outside the administrative record, it needed to submit those documents with its opposition brief to give Patel a reasonable opportunity to respond.

The Board's failure to timely address this issue is surprising. When he filed his petition, Patel also sought a stay of the Board's decision pending hearing on the merits. Prior to the hearing on the application, the court issued a minute order asking the Board to address the following point:

The Board ordered Patel to undergo an on-site clinical competence assessment, including "a comprehensive assessment of [Petitioner's] physical and mental health." What from the Arizona Medical Board's action suggests Petitioner's physical or mental health is an issue.

(Jan. 24, 2018, Minute Order, p. 2.)⁶ The Board did not answer this point at the hearing on the application for a stay. Instead, it stated, "when your Honor has . . . the full record, I think there's going to be more information [i.e., about that requirement]." And again: "when your Honor has the full record, there will be information before the Court about what the scope of that [requirement] is."

⁶ The minute order was issued on January 24, 2018; the hearing on the application was held February 23, 2018.

However, the Board's opposition papers on the merits of Patel's challenge did not provide any information about either the scope of the physical and mental health assessment, or the reasons warranting examination.

B. Practice monitor and prohibition on supervising physician assistants and advanced practice nurses

The Board required Patel to retain a licensed physician to monitor his practice, evaluate his performance, and report whether he is practicing medicine safely and billing appropriately. (Condition 3.) The Board also prohibited Patel from supervising physician assistants and advanced practice nurses. (Condition 8.)

Patel argues because he practices solely in Arizona, the Board lacks jurisdiction to order a practice monitor or prohibit him from supervising physician assistants and advanced practice nurses. In essence Patel argues the Board only has jurisdiction over the practice of medicine in California. It thus lacks jurisdiction to monitor or limit his practice in Arizona.

The Board contends this argument is a red herring because these two conditions are "tolled" while Patel practices outside of California, for up to two years. It points to condition 13, which governs "non-practice while on probation." Condition 13 provides periods of non-practice for a physician residing outside of California will relieve the physician from having to comply with most of the probationary terms and conditions, including the practice monitor requirement and the prohibition on supervising physician assistants and advanced practice nurses.⁷

It thus appears as long as Patel practices medicine exclusively in Arizona, this would be deemed "non-practice" for purposes of his California probation. If so, when Patel is not practicing medicine in California he is not required to have a practice monitor or prohibited from

⁷ Non-practice is defined as "any period of time [Patel] is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052" for at least 40 hours a month. Section 2052 provides "any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick and afflicted *in this state*, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without have at the time of doing so a valid, unrevoked, or unsuspended certificate . . . is guilty of a public offense[.]" (Emphasis added.)

supervising physician assistants or advanced practice nurses.

Patel's challenge to these two conditions fails because the Board is not monitoring or limiting his practice of medicine in Arizona.

C. Records regarding controlled substances

The Board required Patel to keep records of all controlled substances ordered, prescribed, dispensed, or recommended – including medical marijuana. (Condition 6.) Patel argues this was an abuse of discretion because the Arizona Medical Board's action had nothing to do with medical marijuana. Here he fails to convince.

Patel's current practice focuses on pain management and addiction medicine, and he prescribes medical marijuana as permitted in Arizona pursuant to strict guidelines. Patel was disciplined by the Arizona Medical Board for prescribing medications that were not indicated and without proper physical examination, monitoring or tests. The court cannot say the Board abused its discretion by tailoring the terms of Patel's probation to his current practice.

D. Informing the Board if he leaves California

The Board required Patel to inform it of travel to any areas outside California which lasts more than thirty days. (Condition 11.)

Patel does not complain this condition is excessive or an abuse of discretion. Rather, he complains this condition demonstrates the Board blindly adhered to its disciplinary guidelines without stopping to consider whether the particular conditions imposed fit the circumstances of his case. Since Patel currently lives and practices in Arizona, requiring him to inform the Board of travel outside of California may be pointless. But Patel fails to convince it would justify disturbing this condition.

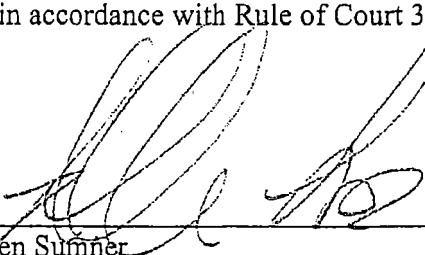
CONCLUSION

For the foregoing reasons, Patel fails to persuade the Board's decision placing him on probation for three years constitutes an abuse of discretion. The court finds, however, the Board failed to establish any cause to require Patel to undergo a comprehensive physical and mental examination. Thus on this record, the Board may not impose this condition.

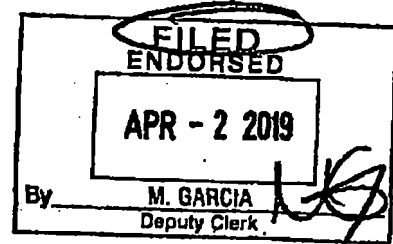
Counsel for the Patel is directed to prepare a judgment and writ, incorporating this order as an exhibit; submit it to the Board's counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

Dated: JAN 8, 2019




Allen Sumner
Judge of the Superior Court of California,
County of Sacramento

Albert J. Garcia, Lawyer (SBN 70917)
2000 Powell Street, Ste. 1290
Emeryville, CA 94608
Telephone: 510.848.5190
Facsimile: 510.758.7370



Attorney for Petitioner, Moneil Patel, MD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

Moneil Patel, MD,

Petitioner,

vs.

Medical Board of California,

Respondent.



) Case No. 34-2018-80002772
)
) ~~[Proposed]~~ Judgment Granting in Part and
) Denying in Part Petition for Writ of
) Administrative Mandate
)
) [Honorable Allen Sumner, Judge]
)
) Hearing Date: January 4, 2019
) Dept.: 42
) Action filed: January 2, 2018

Hearing on the Petition for Writ of Administrative Mandate in the above-entitled matter was conducted on January 4, 2019, in Department 42, the Honorable Allen Sumner, Judge Presiding. Petitioner appeared by Albert J. Garcia, Attorney at Law, and respondent was represented by Attorney General Xavier Becerra, by Mary Cain-Simon, Supervising Deputy Attorney General.

The court, having considered the supporting and opposing papers; the administrative record and the arguments of counsel, hereby grants in part and denies in part the petition, in accordance with its Order After Hearing on Petition for Writ of Mandate, dated January 8, 2019, a copy of which is attached and incorporated herein as Exhibit A. Said Order shall serve as the Statement of Decision under Code of Civ. Proc., § 632.

The court therefore orders issuance of a writ of mandate, remanding the case to respondent with directions to conduct further proceedings and to issue a Decision After Remand in accordance with this court's decision and judgment.

Dated: 3/25/2019


Honorable Allen S. Stone
Judge of the Superior Court of California


Approved as to form:

Dated: _____

By: _____

Mary Cain-Simon, Supervising Deputy
Attorney General
Counsel for Respondent,
Medical Board of California

The court therefore orders issuance of a writ of mandate, remanding the case to respondent ^{Me3} with directions to conduct further proceedings and to issue a ~~Decision~~ ~~Order~~ ~~Remand~~ in accordance with this court's decision and judgment.

Dated: _____

Honorable Allen Sumner
Judge of the Superior Court

Approved as to form: ^{with change}

Dated: 3/1/2019

By: Mary Cain-Simon

Mary Cain-Simon, Supervising Deputy
Attorney General
Counsel for Respondent,
Medical Board of California

Albert J. Garcia, Lawyer
2000 Powell Street, Ste. 1290
Emeryville, CA 94608
Tel.: 510.848.5190 / Fax: 510.758.7370
Email: ajgmedlaw@cal.berkeley.edu

March 11, 2019

Honorable Allen Sumner, Judge
Department 42
Superior Court, County of Sacramento
720 Ninth Street
Sacramento, CA 95814

Re: *Patel v. Medical Board of California*
Sacramento Sup Ct Case No. 34-2018-80002772

Dear Judge Sumner:

Enclosed you will find petitioner's **Proposed Order Granting in Part and Denying in Part Petition for Writ of Administrative Mandate**.

Counsel for respondent, Mary Cain-Simon, Supervising Deputy Attorney General, and I have been unable to agree on the form of order.

I also enclose a copy of page two of the Proposed Judgment, on which Ms. Cain-Simon has crossed out language that is unacceptable to her client. Finally, I enclose emails dated March 1, 2019, in which Ms. Cain-Simon and I discuss our differences.

Respectfully,

Albert Garcia
Albert J. Garcia,
Attorney for Petitioner,
Moneil Patel, MD

c: Mary Cain-Simon, Supervising Deputy Attorney General

2
From: Albert Garcia <ajgmedlaw@yahoo.com>

Sent: Friday, March 01, 2019 2:55 PM

To: Mary S. CainSimon <Mary.CainSimon@doj.ca.gov>

Subject: Re: Public Case Access System - Case: Moneil Patel vs. Medical Board of California - Document Filed Notification

It has always been my experience that a Decision After Remand is issued *after a remand*.

But, I will submit the proposed judgment indicating to the court that you do not approve the form of the proposed judgment.

Very truly yours,

Albert Garcia

Albert J. Garcia, Lawyer

Physician Advocacy

2000 Powell Street, Ste. 1290, Emeryville, CA 94608

Tel.: 510.848.5190 / Fax: 510.758.7370

Email: ajgmedlaw@cal.berkeley.edu

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1
From: Mary S. CainSimon <Mary.CainSimon@doj.ca.gov>

To: Albert Garcia <ajgmedlaw@yahoo.com>

Sent: Friday, March 1, 2019 2:26 PM

Subject: RE: Public Case Access System - Case: Moneil Patel vs. Medical Board of California - Document Filed Notification

Mr. Garcia, I crossed out the portion that I don't think we can do—

Here is the language I can approve:

The court therefore orders issuance of a writ of mandate, remanding the case to respondent with directions to conduct further proceedings in accordance with this court's decision and judgment.

If you want to submit to the court with an explanatory letter with a cc to me, please go ahead. If the judicial reassignment necessitates a new hearing, please let me know immediately.

Mary Cain-Simon

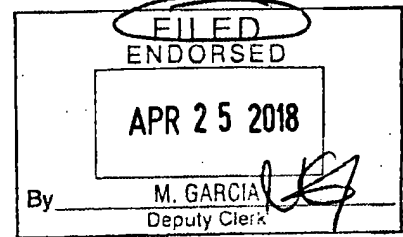
Supervising Deputy Attorney General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102-7004

Please note new phone number:

(415) 510-3884



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

MONTEIL PATEL, MD.,

Petitioner,

v.

MEDICAL BOARD OF CALIFORNIA,

Respondent.

Case No.: 34-2018-80002772

ORDER GRANTING APPLICATION FOR
STAY IN PART

On February 23, 2018, hearing was held on Petitioner's ex parte application for a stay. Petitioner was represented by Albert J. Garcia. Respondent was represented by Mary Cain Simon. As stated on the record, the court granted a modified version of the stay requested, and ordered the parties to meet and confer and submit a draft of a proposed order for the court to sign. The parties having been unable to agree on the contents of the order, the court issues the following order.

The background Petitioner's application for a stay is outlined in the court's January 24, 2018, minute order, and is not repeated in detail here. For present purposes it is sufficient to note Petitioner is a physician who was licensed by Respondent Medical Board of California ("the Board") in 2009. He moved to Arizona in 2011, and obtained a license from the Arizona Medical Board. He currently lives and practices in Arizona, and is not currently practicing in California.

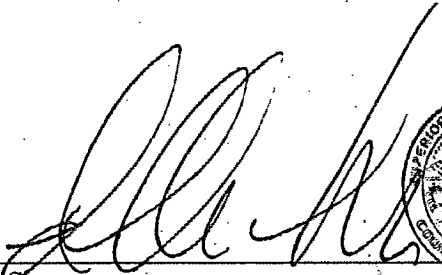
In 2016, the Arizona Medical Board placed Petitioner on probation for six months, which period of probation ended in April 2017.

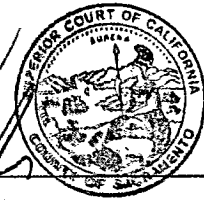
The Business and Professions Code provides that a physician who has been disciplined by another state is also subject to discipline by the Board for unprofessional conduct. (Bus. &

Prof. Code §§ 141, 2305.) As a result of the Arizona Medical Board's disciplinary action, the Board placed Petitioner on probation for three years subject to various terms and conditions. Petitioner now challenges that decision, and also seeks a stay of the decision pending a hearing on the merits.

The decision delineates 13 terms and conditions of probation. Condition 1 requires Petitioner to enroll in and complete a clinical competence assessment program within a specified time period. Condition 3 requires Petitioner to retain a practice monitor to submit quarterly reports to the Board. And Condition 8 prohibits Petitioner from supervising physician assistants and advanced practice nurses during the term of his probation. Those three conditions are hereby stayed pending the hearing on the merits provided Petitioner does not practice medicine in California.

Dated: 4/25, 2018


Allen Sumner
Judge of the Superior Court of California,
County of Sacramento



Kristina D. Lawson, J.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

MONEIL MAHENDRA PATEL, M.D.)

MBC File # 800-2016-027195

Physician's & Surgeon's)
Certificate No. A 107791)

Respondent.)

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "EXECUTION" DATE PORTION
OF ORDER GRANTING STAY**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "Execution is stayed" portion of the Order Granting Stay in the above-entitled matter and that such clerical error should be corrected.

IT IS HEREBY ORDERED that the date contained on the Order Granting Stay in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the order to read as "Execution is stayed until January 12, 2018".

DATED: January 4, 2018



Kimberly Kirchmeyer
Executive Director
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MONEIL MAHENDRA PATEL, M.D.

Physician's & Surgeon's
Certificate No. A 107791

Respondent

)
)
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) MBC No. 800-2016-027195
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ORDER GRANTING STAY

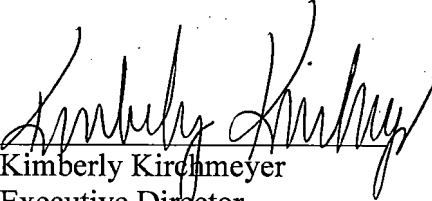
(Gov't Code Section 11521)
)
)
)

Albert J. Garcia, Esq., on behalf of Moneil Mahendra Patel, M.D., has filed a Petition for Reconsideration of the Decision in this matter with an effective date of January 5, 2018.

Execution is stayed until January 15, 2018.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: January 3, 2018



Kimberly Kirchmeyer
Executive Director
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MONEIL MAHENDRA PATEL, M.D.

Physician's & Surgeon's
Certificate No. A107791

Respondent.

Case No. 800-2016-027195

OAH No. 2017020335

DECISION AFTER NON-ADOPTION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on June 1, 2017, in Oakland, California.

Joshua M. Templet, Deputy Attorney General, Office of the Attorney General (OAG) represented Kimberly Kirchmeyer, Executive Director, Medical Board of California (Board).

Albert J. Garcia, Attorney at Law, represented Respondent Moneil Mahendra Patel, M.D., who was present.

The record closed on June 1, 2017. Panel B of the Board (Panel) declined to adopt the Proposed Decision (Decision) and issued an Order of Non-Adoption (Order) on August 10, 2017, and the Order sought written argument on whether the proposed penalty should be modified. Oral argument was scheduled for October 25, 2017, and oral argument was heard by the Panel on that date. Respondent was present, as was the OAG. Respondent's counsel appeared by telephone. Having read and considered the administrative record and the written argument submitted by both parties, and having heard oral argument, the Panel hereby makes and enters the following as its decision in this matter.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer filed the Accusation in her official capacity as Executive Director of the Medical Board of California (Board).

2. On May 15, 2009, the Board issued Physician's and Surgeon's Certificate No. A107791 to Moneil Mahendra Patel, M.D. (Respondent). Respondent's certificate will expire on August 31, 2018, unless renewed.

3. On October 5, 2016, the Arizona Medical Board issued a "Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation" (Arizona Order) regarding Respondent's medical license in that state. The Arizona Board found that between 2012 and 2014, Respondent engaged in unprofessional conduct by inappropriately prescribing medication for weight loss for two patients. It found that Respondent prescribed "a variety of controlled substances to Patients SN and MA that were not indicated and [were] issued prior to any patient examination," and that SN and MA suffered actual harm because they "were subjected to unnecessary therapy." In addition to the letter of reprimand, Respondent was placed on probation for six months, pursuant to conditions that he complete in-person and intensive continuing medical education (CME) classes including no less than five hours in ethics and a minimum of 15 hours in medical recordkeeping.

4. Respondent's conduct and the action that the Arizona Board took against Respondent constitute unprofessional conduct within the meaning of California law.

5. On February 25, 2017, Respondent completed a 13-hour course titled "Burnout: Recognition and Prevention" presented by the Texas Medical Association in Fort Worth. He earned six hours of CME credit in ethics. On March 18, 2017, Respondent completed a course titled "Medical Record Keeping" in San Mateo presented by the Western Institute of Legal Medicine, and earned 17 hours of CME credit.

6. By letter dated April 14, 2017, the Arizona Board informed Respondent that he had satisfied the terms and conditions of the Board's Order and that probation was terminated.

Respondent's evidence

7. Respondent was raised in Southern California and graduated from the University of California, Irvine. He earned his medical degree at Ross University School of Medicine, Commonwealth of Dominica, West Indies, and completed an internship and a residency (anatomic pathology/clinical pathology) at New York Medical College, St. Vincent's Catholic Medical Center. Respondent completed a fellowship in pediatric pathology at the University of Southern California Keck School of Medicine, Children's Hospital, Los Angeles, in 2010.

8. Respondent and his wife moved to Arizona in 2011. Respondent took a position with Life XMD in Scottsdale, a clinic that specializes in bio-identical hormone replacement therapy (HRT). Respondent saw patients in the facility. He describes the practice as "more cosmetic or elective," and explained that the focus of treatment was on improving strength or stamina, primarily for men.

At the time he practiced at Life XMD, between 2012 and 2014, Respondent believed that his expertise in laboratory medicine, along with the specific courses and training he completed, would serve him well in an emerging field of medicine. He now believes that more needs to be known about possible long-term side effects of HRT, and chose to leave the practice in 2014.

Since leaving Life XMD, Respondent has been in general practice focusing on pain management and addiction medicine. On Fridays, he works at Corebella Health and Wellness, a private clinic assisting addicts who are struggling to recover from heroin or prescribed narcotics. In this role, Respondent prescribes medications such as Suboxone and medical marijuana, which is permitted in Arizona pursuant to strict guidelines.

9. Respondent describes a lack of documentation as the most egregious error he made. This is because improper documentation can lead to confusion for the next physician who treats the patient. Respondent asserts that he did conduct proper physical examinations, but he failed to document them thoroughly. He acknowledged that this failure could lead to patient harm. In 2013, he began to use electronic medical records (EMR), and is very pleased with the results.

Respondent described the recordkeeping course he took in San Mateo as "tremendous." He has since further improved his practice in documentation and informed all of his colleagues about the important things he learned. Respondent is particularly enthusiastic about how the use of EMR's allows him to thoroughly document continuity of care in the patient's medical record.

10. Sandeep Lal, M.D., is a hospitalist with Kaiser Permanente in San Leandro. He met Respondent when they were in medical school and they are very good friends. Dr. Lal testified at hearing on Respondent's behalf after working a 12-hour overnight shift. He described his relationship with Respondent as like a brother, and they talk on the phone regularly and take trips together. Dr. Lal opined that Respondent has good values, morals, and integrity, and is always honest and truthful. Dr. Lal has read the pertinent legal documents, but they do not change his mind about Respondent. He noted that Respondent told him about the Arizona action and that Respondent has accepted responsibility for his actions.

11. Matthew Dorchester, D.C., operates a "General Medical and Physical Medicine Therapy Practice" in Arizona. In a letter dated May 13, 2017, he wrote that he is aware of the Arizona Board's action, and strongly disagrees with the outcome, but notes that Respondent has accepted responsibility for the underlying conduct. Dr. Dorchester has worked with Respondent since October 2014, and describes him as a warm and kind friend, who has "lifted himself up out of the emotional turmoil to find a higher ground with an enlightened sense of purpose." He continues to support Respondent, and will continue to employ him in his practice.

12. Mona Amin, D.O., is Respondent's wife. In a letter dated May 18, 2017, she wrote that she has known him since 2007 and that "he is an outstanding physician." He handled

the stress of the Arizona Board action “with dignity and compliance.” Dr. Amin opined that Respondent is not only knowledgeable, but that “he strives to provide excellent care to his patients and takes the time to assess their problems.”

LEGAL CONCLUSIONS

1. Business and Professions Code section 141, subdivision (a), provides:

For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

Business and Professions Code section 2305 provides:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

2. Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code sections 141 and 2305 by reason of the matters set forth in Findings 3 and 4.
3. In his written argument, Respondent urges the Panel to adopt the Decision, which specified that the level of discipline to be imposed was a public reprimand and prescribing practices course. In his argument, Respondent suggests that he has gained insight from the disciplinary endeavor undertaken by the Arizona Medical Board, is not engaged in bio-identical hormone replacement therapy, has complied with the foreign board’s decision and has accepted responsibility for his actions, and the proposed level of discipline was adequate. Respondent’s counsel explained that Board’s disciplinary guidelines were, in fact, *guidelines* from which the Panel could deviate. Counsel for Respondent was emphatic that the Panel was not bound by the level of discipline originally proposed.

4. Complainant's counsel, in her written argument, saw the matter through a different lens. In this matter, her argument stated, a deviation from the Board's established guidelines was not prudent public policy and that the Arizona Medical Board's guidelines do not control here. At oral argument, Complainant's counsel was resolute that the original Decision's discipline was inadequate.

5. The Panel believes a more comprehensive level of discipline is necessary to protect the public and aid in the rehabilitation of the licensee. (See Bus. & Prof. Code, §§ 2001.1, 2229.) The Board's guidelines, incorporated by reference in regulation, with respect to discipline taken against a Board licensee by another licensing jurisdiction, set forth the concept that the Board should impose that level of discipline for a similar offense if conducted in California. (See Cal. Code Regs., tit. 16, § 1361, See also *Manual of Model Disciplinary Orders and Disciplinary Guidelines* (2016), p. 22.) In California, the prescribing of a dangerous drug to a patient without an appropriate prior examination and a medical indication constitutes unprofessional conduct. (Bus. & Prof. Code, § 2242.) Likewise, failing to maintain adequate and accurate medical records constitutes unprofessional conduct. (Bus. & Prof. Code, § 2266.)

6. This is not a one patient case, and it is not a case where a public reprimand – even with additional education -- will advance public protection and aid in the rehabilitation of the licensee. Respondent prescribed controlled substances to two patients without medical indication and prior to a medical examination, which subjected them to unnecessary therapy and actual harm. (See Factual Findings, Para. 4.) Rather, a term of probation with attendant terms and conditions is necessary in this case.

7. At hearing, Respondent testified that the biggest error he made was in regard to documentation. (See Factual Findings, Para. 9, See also Reporter's Transcript, p. 16, lines 24-25, p. 18, lines 2-7.) The Panel believes that Respondent's conduct cannot be minimized in that way, however, and that Respondent committed unprofessional conduct beyond inadequate medical recordkeeping. As one of the purposes of administrative discipline is to prevent patient harm, the Panel will order Respondent to successfully complete additional medical education and a clinical competency assessment program. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.)

ORDER

Physician's and Surgeon's Certificate No. A107791, issued to Moneil Mahendra Patel, M.D., is hereby revoked. However, the revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions.

1. Clinical Competence Assessment Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after

respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require respondent's on-site participation for a minimum of 3 and no more than 5 days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the respondent did not successfully complete the clinical competence assessment program, the respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

2. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at pain management and addiction medicine and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the

course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. Monitoring - Practice/Billing

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within

60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

4. Medical Record Keeping Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

5. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. Controlled Substances- Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

7. Notification

Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

9. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

14. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

15. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. License Surrender

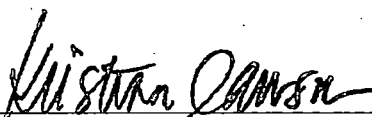
Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This Decision shall become effective on: January 5, 2018 at 5:00 p.m.

It is so ORDERED: December 7, 2017.



KRISTINA D. LAWSON, J.D.
Chair, Panel B
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MONEIL MAHENDRA PATEL, M.D.

Physician's & Surgeon's
Certificate No: A 107791

Respondent

Case No.: 800-2016-027195

OAH No.: 2017020335

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

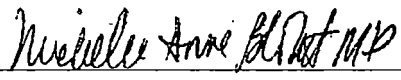
To order a copy of the transcript, please contact Diamond Court Reporters, 1107 2nd Street, Suite 210, Sacramento, CA 95814. The telephone number is (916) 498-9288. To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 576-3216
Attention: Robyn Fitzwater

Date: August 10, 2017


Michelle Bhlot, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MONEIL MAHENDRA PATEL, M.D.
Scottsdale, Arizona

Physician's & Surgeon's
Certificate No. A107791

Respondent.

OAH No. 2017020335

Case No. 800-2016-027195

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on June 1, 2017, in Oakland, California.

Joshua M. Templet, Deputy Attorney General, represented Kimberly Kirchmeyer, Executive Director, Medical Board of California.

Albert J. Garcia, Attorney at Law, represented Respondent Moneil Mahendra Patel, M.D., who was present.

The record closed on June 1, 2017.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer filed the Accusation in her official capacity as Executive Director of the Medical Board of California (Board).
2. On May 15, 2009, the Board issued Physician's and Surgeon's Certificate No. A107791 to Moneil Mahendra Patel, M.D. (Respondent). Respondent's certificate will expire on August 31, 2018, unless renewed.
3. On October 5, 2016, the Arizona Medical Board issued a "Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation" (Arizona Order) regarding Respondent's medical license in that state. The Arizona Board found that between 2012 and 2014, Respondent engaged in unprofessional conduct by inappropriately prescribing

medication for weight loss for two patients. It found that Respondent prescribed "a variety of controlled substances to Patients SN and MA that were not indicated and [were] issued prior to any patient examination," and that SN and MA suffered actual harm because they "were subjected to unnecessary therapy." In addition to the letter of reprimand, Respondent was placed on probation for six months, pursuant to conditions that he complete in-person and intensive continuing medical education (CME) classes including no less than five hours in ethics and a minimum of 15 hours in medical recordkeeping.

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6. By letter dated April 14, 2017, the Arizona Board informed Respondent that he had satisfied the terms and conditions of the Board's Order and that probation was terminated.

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7. Respondent was raised in Southern California and graduated from the University of California, Irvine. He earned his medical degree at Ross University School of Medicine, Commonwealth of Dominica, West Indies, and completed an internship and a residency (anatomic pathology/clinical pathology) at New York Medical College, St. Vincent's Catholic Medical Center. Respondent completed a fellowship in pediatric pathology at the University of Southern California Keck School of Medicine, Children's Hospital, Los Angeles, in 2010.

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10. Sandeep Lal, M.D., is a hospitalist with Kaiser Permanente in San Leandro. He met Respondent when they were in medical school and they are very good friends. Dr. Lal testified at hearing on Respondent's behalf after working a 12-hour overnight shift. He described his relationship with Respondent as like a brother, and they talk on the phone regularly and take trips together. Dr. Lal opined that Respondent has good values, morals, and integrity, and is always honest and truthful. Dr. Lal has read the pertinent legal documents, but they do not change his mind about Respondent. He noted that Respondent told him about the Arizona action and that Respondent has accepted responsibility for his actions.

11. Matthew Dorchester, D.C., operates a "General Medical and Physical Medicine Therapy Practice" in Arizona. In a letter dated May 13, 2017, he wrote that he is aware of the Arizona Board's action, and strongly disagrees with the outcome, but notes that Respondent has accepted responsibility for the underlying conduct. Dr. Dorchester has worked with Respondent since October 2014, and describes him as a warm and kind friend, who has "lifted himself up out of the emotional turmoil to find a higher ground with an enlightened sense of purpose." He continues to support Respondent, and will continue to employ him in his practice.

12. Mona Amin, D.O., is Respondent's wife. In a letter dated May 18, 2017, she wrote that she has known him since 2007 and that "he is an outstanding physician." He handled the stress of the Arizona Board action "with dignity and compliance." Dr. Amin opined that Respondent is not only knowledgeable, but that "he strives to provide excellent care to his patients and takes the time to assess their problems."

LEGAL CONCLUSIONS

1. Business and Professions Code section 141, subdivision (a), provides:

For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

Business and Professions Code section 2305 provides:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.


2. Cause for disciplinary action against Respondent exists pursuant to Business and Professions Code sections 141 and 2305 by reason of the matters set forth in Findings 3 and 4.

3. Complainant argues that the Arizona Order should inform the discipline in California, and that because there were 11 departures from the standard of care, a term of probation with conditions including a practice monitor and a prescribing course is necessary to protect the public. Respondent contends that a public reprimand and a prescribing course will be sufficient. Respondent is persuasive. The Arizona Order of course informs this matter, but both the factual basis and the discipline imposed are instructive. The Arizona discipline did not include a lengthy term of license probation with multiple, serious conditions. Rather, a six-month term and medical recordkeeping and ethics courses were imposed, and such has been successfully completed. Also, the factual circumstances underlying the discipline occurred in 2012 through 2014, and Respondent has changed his practice in many ways since that time. All things considered, a public reprimand and a requirement that Respondent complete a prescribing practices course will be sufficient to protect the public interest.

ORDER

Moneil Mahendra Patel, M.D., holder of Physician's and Surgeon's Certificate No. A107791, is publicly reprimanded. In addition, within 90 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its approval a prescribing practices course. Respondent shall complete the course within six months of the effective date of this Decision, unless the Board or its designee agrees, in writing, to a later time for completion. Respondent shall pay all costs of the course. If Respondent does not comply with this condition, his license shall be automatically suspended until further order of the Board. The course shall be in addition to the continuing medical education requirements for re-licensure.

DATED: June 29, 2017

DocuSigned by:

33F7F6838A33417
MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

1 KATHLEEN A. KENEALY
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Attorneys for Complainant

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-027195

13 **Moneil Mahendra Patel, M.D.**
14 **11943 E. Beryl Ave**
15 **Scottsdale, AZ 85259**

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. A 107791,**

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about May 15, 2009, the Board issued Physician's and Surgeon's Certificate
24 Number A 107791 to Moneil Mahendra Patel, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2018, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides, in part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2305 of the Code states:

"The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state."

6. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

/// KATHLEEN A. KENEALY

1
2 **CAUSE FOR DISCIPLINE**

3 **(Discipline, Restriction, or Limitation Imposed by Another State)**

4 7. On or about October 5, 2016, the Arizona Medical Board issued a "Findings of Fact,
5 Conclusions of Law and Order for Letter of Reprimand and Probation" (Arizona Order). The
6 Arizona Order found that Respondent engaged in unprofessional conduct in that he
7 inappropriately prescribed medications for weight loss for two patients. Specifically, the Arizona
8 Order found that Respondent deviated from the standard of care in that he prescribed "a variety of
9 controlled substances to Patients SN and MA that were not indicated and issued prior to any
10 patient examination." The Arizona Board also found that "actual harm occurred in that SN and
11 MA were subjected to unnecessary therapy." As a result of Respondent's unprofessional conduct,
12 the Arizona Medical Board issued a letter of reprimand and placed Respondent on 6 months of
13 probation with the requirement that he complete no less than 5 hours of CME in an "intensive, in-
14 person course regarding ethics" and a minimum of 15 hours of CME in an "intensive, in person
15 course regarding medical recordkeeping."

16 8. Respondent's conduct as set forth in paragraph 7 above, and as described within the
17 Arizona Order, attached as Exhibit A, constitute unprofessional conduct and cause for discipline
18 pursuant to sections 2305 and/or 141 of the Code.

19
20
21 **PRAAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Medical Board of California issue a decision:

24 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 107791,
25 issued to Moneil Mahendra Patel, M.D.;

26 2. Revoking, suspending or denying approval of Moneil Mahendra Patel, M.D.'s
27 authority to supervise physician assistants, pursuant to section 3527 of the Code;
28

1 3. Ordering Moneil Mahendra Patel, M.D., if placed on probation, to pay the Board the
2 costs of probation monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.

4
5 DATED: January 19, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **MONEIL M. PATEL, M.D.**

4 Holder of License No. 44593
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-14-1082A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR LETTER
OF REPRIMAND AND PROBATION**

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on
8 August 4, 2016. Moneil M. Patel, M.D. ("Respondent"), appeared with legal counsel
9 Andrew Plattner, Esq., before the Board for a Formal Interview pursuant to the authority
10 vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact,
11 Conclusions of Law and Order after due consideration of the facts and law applicable to
12 this matter.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of license number 44593 for the practice of
17 allopathic medicine in the State of Arizona.

18 3. The Board initiated case number MD-14-1082A after receiving a complaint
19 regarding Respondent's care and treatment of two patients ("SN" and "MA") alleging that
20 Respondent was inappropriately prescribing medications for weight loss for both patients.

21 4. In April of 2012, Respondent began working as an independent practitioner
22 with LIFEXMD, a private practice offering hormone optimization and testosterone therapy.
23
24
25

Patient SN

5. In September of 2012, SN, a Washington resident, was seen at the LIFEXMD in Washington. SN continued to be treated by different providers at LIFEXMD throughout the year.

6. Respondent prescribed Phentermine, Sermorelin, and Omnitrope to SN on July 9, 2013. On July 23, 2013, Respondent conducted his first telemedicine encounter with SN, who provided a self-reported weight of 253. Respondent listed diagnoses of overweight and fatigue with the recommendation to continue therapy. There was no mention of testosterone or the medications previously prescribed by Respondent on July 9, 2013.

7. Respondent continued to prescribe SN medications throughout 2014, which included HCG, Oxandrolone, and Omnitrope. Additionally, Respondent began prescribing SN Adderall for weight loss in May 2014.

8. On July 21, 2014, Respondent listed diagnoses of hypogonadism and overweight with the recommendation for updated labs and a physical exam at the next visit. Respondent refilled SN's Adderall, but there was no documentation of lab orders for the next visit.

9. In October of 2014, Respondent began prescribing Testosterone cypionate and later added Liothyronine to SN's medications. Respondent's records did not identify a rationale for the additional prescriptions and Respondent did not record a TSH value.

Patient MA

10. MA was a patient of LIFEXMD who also held an officer position at the practice. MA also had the ability to phone in and fax prescriptions for himself and others.

11. MA began treatment with LIFEXMD in December of 2011 and Respondent's first involvement with MA's care occurred on June 25, 2012, when a prescription for

1 Phentermine was provided by Respondent for MA. Respondent provided additional
2 prescriptions for Liothyronine, Phentermine, Oxandrolone, Anastrozole, and Tamoxifen on
3 July 24, 2012.

4 12. The first documentation of Respondent seeing MA as a patient occurred on
5 August 8, 2012. During the August 8, 2012 visit there were no vital signs documented and
6 it was noted that MA had been on therapy since January. Respondent diagnosed MA with
7 overweight, fatigue, and andropause with no labs to support the diagnosis.

8 13. MA continued to be prescribed medications from Respondent and other
9 LIFEXMD providers throughout 2013 and 2014, which included prescriptions MA ordered
10 for tamoxifen and anastrozole on March 18, 2013. Respondent denied approving the
11 prescriptions for MA on that date.

12 14. In July of 2014, Respondent noted MA's poor compliance with medications
13 and diagnosed him with hypogonadism and overweight with the recommendation to obtain
14 new labs, discontinue Adderall, and continue Armour thyroid medication for weight loss.
15 Respondent last evaluated MA in November of 2014 over the telephone for a medication
16 refill. Respondent diagnosed MA with hypogonadism and recommended current T3
17 therapy, noting that MA's weight was still elevated.

18 15. The standard of care for treatment of patients with exogenous obesity
19 requires a physician to discuss the need for dietary changes, caloric reduction, regular
20 exercise, and/or behavioral modification. Respondent deviated from the standard of care
21 by failing to discuss the need for dietary changes, caloric reduction, regular exercise, and
22 behavioral modification for patients SN and MA.

23 16. The standard of care when administering hCG requires a physician to clearly
24 identify the rationale and indication for the treatment. Respondent deviated from the
25 standard of care by administering hCG to patients SN and MA without an indication.

1 17. The standard of care when providing liothyronine requires a physician to
2 monitor for thyroid status. Respondent deviated from the standard of care by providing
3 liothyronine to patients SN and MA for weight loss but failing to monitor thyroid status.

4 18. The standard of care requires a physician to monitor vital signs during the
5 course of treatment. Respondent deviated from the standard of care by failing to monitor
6 vital signs for SN and MA during the course of treatment.

7 19. The standard of care requires a physician to explore secondary causes of
8 obesity from findings based on history, physical exam and initial lab screening.
9 Cardiovascular risk factors should be identified and treated, and comorbidities explored
10 and documented. Respondent deviated from the standard of care by failing to adequately
11 screen patients SN and MA for cardiovascular risk.

12 20. The standard of care for treatment with testosterone requires a physician to
13 monitor hematocrit, testosterone levels, and PSA. Respondent deviated from the standard
14 of care by failing to perform lab monitoring of SN and MA to whom Respondent prescribed
15 testosterone, including hematocrit, testosterone levels, and PSA.

16 21. The standard of care requires a physician to avoid the use of anastrozole
17 and oxandrolone in patients with obesity and without proper indications for the use of an
18 anabolic steroid. Respondent deviated from the standard of care by inappropriately using
19 anastrozole and oxandrolone for SN and MA, who were being treated for exogenous
20 obesity and possible diminished libido, without indication for the use of an anabolic steroid.

21 22. The standard of care requires a physician to perform a physical examination
22 prior to prescribing controlled substances and to clearly identify the indications for the
23 prescribed medication. Respondent deviated from the standard of care by prescribing a
24 variety of controlled substances to patients SN and MA that were not indicated and issued
25 prior to any patient examination.

1 23. The standard of care requires a physician to coordinate patient care with
2 other providers involved in the patient's treatment. Respondent deviated from the
3 standard of care by failing to coordinate care with other providers involved in the treatment
4 of SN and MA.

5 24. Actual harm occurred in that SN and MA were subjected to unnecessary
6 therapy.

7 25. There was the potential for patient harm in that the medications provided to
8 SN and MA could cause increased risks for other serious health issues.

9 26. During a Formal Interview on this matter, Respondent testified that he
10 worked with the medical practice at issue from 2012 through 2014, focusing on providing
11 elective bioidentical hormone replacement therapy. Respondent testified that the majority
12 of the patients at the practice are non-professional athletes and other individuals wishing
13 to maintain an active lifestyle. Respondent stated that charting was difficult during his time
14 at the practice because he only had a few hours of access to the charts per month. He
15 stated that he now has implemented electronic medical records and has regular access to
16 charts.

17 27. In response to questions from Board members, Respondent stated that he
18 was not specifically aware of any black box warnings for the medications at issue in the
19 case.

20 28. Board members expressed concern with the care provided to the patients in
21 this case; specifically, whether Respondent's treatments were scientifically grounded and
22 whether patients were adequately informed of the risks of the medications being
23 prescribed by Respondent.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate records on a patient.").

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) ("Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent is placed on Probation for a period of 6 months with the following terms and conditions:

3. Continuing Medical Education

Respondent shall within 6 months of the effective date of this Order obtain no less than 5 hours of Board staff pre-approved Category I Continuing Medical Education ("CME") in an intensive, in-person course regarding ethics and a minimum of 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. Respondent shall within **thirty days** of the effective date of this Order submit his request for CME to the Board for pre-approval. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure. The Probation shall terminate upon Respondent's proof of successful completion of the CME.

1 4. The Board retains jurisdiction and may initiate new action based upon any
2 violation of this Order.

3 RIGHT TO PETITION FOR REHEARING OR REVIEW

4 Respondent is hereby notified that he has the right to petition for a rehearing or
5 review. The petition for rehearing or review must be filed with the Board's Executive
6 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
7 petition for rehearing or review must set forth legally sufficient reasons for granting a
8 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after
9 date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed,
10 the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

11 Respondent is further notified that the filing of a motion for rehearing or review is
12 required to preserve any rights of appeal to the Superior Court.

13 DATED AND EFFECTIVE this 5th day of October, 2016.

14 ARIZONA MEDICAL BOARD

15 By Patricia E. McSorley
16 Patricia E. McSorley
17 Executive Director

18 EXECUTED COPY of the foregoing mailed
19 this 5th day of October, 2016 to:

20 Moneil M. Patel, M.D.
21 Address of Record

22 ORIGINAL of the foregoing filed
23 this 5th day of October, 2016 with:

24 Arizona Medical Board
25 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

Mary Babey
Board staff